

Vested Rights White Paper

The below summarizes four ways to obtain vested rights: (i) common law vesting; (ii) vesting tentative maps; (iii) development agreements; and (iv) SB 330 preliminary applications.

(1) Common Law Vesting

In the leading case of *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, the California Supreme Court explained that a developer can obtain vested rights where it: (i) obtained a building permit; (ii) performed substantial work under that permit; and (iii) incurred substantial liabilities in good faith reliance on that permit. (*Id.* at 791-798.) While *Avco* recognized that vesting might be obtained in certain “rare situations” prior to building permit issuance (*id.* at 793-794), common law vesting typically accrues relatively late in the development process. As a result, the California Legislature created two statutory forms of vesting: (i) vesting tentative maps; and (ii) development agreements.

(2) Vesting Tentative Map

(Gov. Code, §§ 66498.1-66498.9; Chico Muni. Code, Title 18)

A Vesting Tentative Map (“VTM”) establishes a vested right for a subdivider to proceed with development in substantial compliance with the City ordinances, policies, and standards in effect when the VTM application was found to be complete. (Gov. Code, § 66498.1(b); Muni. Code, § 18.07.040(A)(3).) The only limitation is that this does not cover ordinances, policies, and standards where, before the application was complete, the City: (i) initiated proceedings by way of ordinance, resolution, or motion; and (ii) provided public notice describing the proposed change. (Gov. Code, §§ 66474.2(b), 66498.1(b), Muni. Code, § 18.07.040(A)(3).) Otherwise, unless a subdivider requests that later changes be applied to a project (Gov. Code, §§ 66498.2, 66498.4; Muni. Code, §§ 18.07.040(A)(5)-(6)), later enacted ordinances, policies, and standards only may be applied if needed to: (i) prevent a dangerous health or safety condition; and/or (ii) comply with state or federal law. (Gov. Code, § 66498.1(c); see also *id.* § 66498.6.)

The life of a VTM is the same as any tentative map. (Muni. Code, § 18.07.040(A)(4).) A tentative map has an initial term of 36 months. (Gov. Code, § 66452.6(a)(1); Muni. Code, § 18.07.060(C).) A 48-month extension is provided with the filing of each phased final map if certain criteria are met, allowing for extensions up to 10 years from initial approval. (Gov. Code, §§ 66452.6(a)(1)-(3).) Discretionary extensions can provide six additional years. (Gov. Code, § 66452.6(e); Muni. Code, §§ 18.07.060(C), 18.09.060(A)(3).) A VTM may be extended during development moratoria (as defined in the Subdivision Map Act) and lawsuits challenging map approval. (Gov. Code, §§ 66452.6(b)-(c), (f). If a timely VTM filing is made, subsequent City actions (e.g., processing, approving, recording) may occur after expiration. (*Id.* § 66452.6(d).)

Vested rights expire one year after recording of a final map (Gov. Code, § 66498.5(c); Muni. Code, §§ 18.07.040(A)(4), 18.09.060(E)), subject to a one-year extension (Gov. Code, § 66498.5(c); Muni. Code, §§ 18.09.060(A)(4), 18.09.060(E)(2)(b)). Where phased final maps are recorded, the initial one-year period begins for each phase when the final map for that phase is

recorded. (Gov. Code, § 66498.5(b); Muni. Code, § 18.07.040(A)(4).) Time periods are extended by any time used by the City for processing a complete application for a grading permit or for design or architectural review if the time to process exceeds 30 days from the date of a complete application submittal. (Gov. Code, § 66498.5(c); Muni. Code, § 18.09.060(E)(2)(a).) Submission of a complete building permit application extends vested rights through expiration of that permit (including any extension). (Gov. Code, § 66498.5(d); Muni. Code, § 18.09.060(E)(2)(a).)

(3) Development Agreement

(Gov. Code, §§ 65864-65869.5; Chico Muni. Code, Chptr. 19.32)

The City may enter into development agreements with developers that “freeze” City rules, regulations, and policies as they apply to a project for a period of time, usually in exchange for conditions on the development. (Gov. Code, §§ 65865, 65865.2; Muni. Code, § 19.32.020.) Vesting typically accrues upon execution of the development agreement unless the agreement provides otherwise. (Gov. Code, § 65866.) Unless otherwise provided, the scope of vesting is the applicable City rules, regulations, and official policies that are in force at the time of execution of the development agreement, subject to modification or suspension only as necessary to comply with subsequently enacted state or federal laws or regulations. (*Id.*; Muni. Code, § 19.32.060.)

(4) SB 330 Preliminary Application

(Gov. Code, §§ 65589.5(o), 65941.1)

The California Legislature recently established a new statutory vested right for “housing development projects” (as defined in the Housing Accountability Act) through the creation of the “preliminary application” process. Subject to certain limited exceptions, a housing development project is subject only to those ordinances, policies, and standards adopted and in effect when a preliminary application containing all the information required under Government Code section 65941.1 and the applicable fee payment are submitted to the City. (Gov. Code, § 65589.5(o).) This process (and thus the creation of a vested right) does not require a determination by the City as to the completeness of the submitted preliminary application. (*Id.* § 65589.5(d)(3).)

“Ordinances, policies, and standards” includes: general plan, community plan, specific plan, zoning, design review standards and criteria; subdivision standards and criteria; and any other rules, regulations, requirements, and policies of the City, including those relating to impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions. (*Id.* § 65589.5(o)(4).) The only exceptions are where: (i) fees automatically adjust based on a published cost index; (ii) an ordinance, policy, or standard is needed to mitigate or avoid an adverse health or safety impact, with no feasible alternative; (iii) an ordinance, policy, or standard is needed to reduce an impact under CEQA; (iv) a project has not begun construction within 2.5 years (3.5 years for an affordable housing project) after final project approval; or (v) there is a change in number of units or square footage of construction of 20% or more (exclusive of a density bonus).